



REGULAR MEETING

PUBLIC EMPLOYEES' RETIREMENT BOARD

March 8, 2007

The regular meeting was called to order by President Carole Carey at 8:30 a.m. Thursday, March 8, 2007. Roll call was taken with all members of the Board present except Mr. Jay Klawon, who was excused. Board members and staff present were:

Carole Carey, President
John Paull, Vice President
Robert Griffith, Member
Troy McGee, Member
Elizabeth Nedrow, Member
Terry Smith, Member
Melanie Symons, Legal Counsel
Scott Miller, Legal Assistant
Roxanne Minnehan, Executive Director
Karen Davis, Executive Assistant

OPEN MEETING

Chad Nicholson, Rick Ryan, Doug Neil, Matt Norby, Scott Moore, Keith Simendinger, Dan Catrell, Ed Regele, and Jack Trethewey, members of the State Firemen's Association; Tom Schneider, MPEA; Kathleen Field, Department of Administration; Greg Martin, Labor Relations; Tim Jones, Great-West; Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; and Diann Levandowski, MPERA, joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of February 8, 2007 were presented. Mr. Troy McGee noted a typo on page 7 under Board of Investments. The MPERS market value should read 3.8 billion instead 3.8 million. In addition, Ms. Elizabeth Nedrow mentioned that Mr. John Paull and she had attended the February Board meeting via conference phone. After corrections were noted, all members voted to accept the minutes from the February 8, 2007 Board meeting.

Public Comment – Mr. Doug Neil, from the State Firemen's Association formally thanked Ms. Kim Flatow, Ms. Melanie Symons, and Ms. Roxanne Minnehan for working with the Firemen's Association in regards to SB532. By working together, all parties were able to come to an agreement regarding the bill. In addition, Mr. Tim Jones, from Great West, formally thanked the MPERA staff and the Board on their decision to renew their contract with Great West.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Tax Counsel Contract – Scott Miller

The Board has contracted with ICE Miller for tax counsel services for several years. The contract has expired. Legal counsel contracts are exempt from the RFP process; however, we do need legal contracts to go through a legal services committee. The legal services committee has a policy to approve only one year contracts. Last month the Board approved staff to move ahead with the contract. PERA has received the signed contract from ICE Miller and the contract was presented to President Carey for signature.

Actuary Contract – Scott Miller

The Board's contract with Milliman Consultants & Actuaries expires at the end of this fiscal year. Actuarial services are also exempt from the RFP process. The Board has decided in the past to use the RFP process. However, the Board decided last month to renew the contract for one year, if possible, and go out with an RFP at a later date. The current contract is renewable for a two year period. A two-year contract ensures that the actuarial firm pricing the legislative proposals for the session is the firm that performed the prior FYE valuation. Staff is proposing to renew the current contract for two years. Staff also informed the Board that the actuary evaluations will increase from \$54,000 to \$65,000. Mr. Troy McGee made a motion to extend the actuary contract from a one year period to a two year period. Mr. Bob Griffith seconded the motion. Motion carried 6-0.

Set Interest Rate Credited to Member Accounts – Barb Quinn

MPERA has performed its annual analysis of the short-term interest rates and recommends increasing the current rate credited to member accounts from 3.75% to 4.50%. The increase would be effective at the beginning of FY 2008, beginning July 1, 2007. Mr. Bob Griffith made a motion to increase the interest rate from 3.75% to 4.50%. Mr. John Paull seconded the motion. Motion carried 6-0.

Informal Consideration – Bigfork VFD – Diann Levandowski

The Volunteer Firefighters' Compensation Act (VFCA) offers retirement benefits for unincorporated rural volunteer fire company firefighters. Each year we send the qualified departments a turnaround document called an Annual Certificate. The fire chief completes the certificate indicating eligible members--those members who obtained 30 hours of instructional training and served the fire company for the entire fiscal year. The Bigfork VFD did not file an Annual Certificate for FY 2006 due to a number of personnel changes. The fire chief is requesting the Board accept the late certificate granting 15 members service for FY 2006. Mr. Bob Griffith made a motion to accept the late certificates. Mr. Terry Smith seconded the motion. Motion carried 6-0.

457/401(a) Investment Policy Statement Adoption by Rule – Melanie Symons

In February 2007, the Board approved the Investment Policy Statement for the deferred compensation and defined contribution retirement plans. The Board must now adopt the amended IPS by reference through the administrative rule process. Mr. John Paull made a motion to approve to adopt the amended Investment Policy Statements by rule. Mr. Bob Griffith seconded the motion. Motion carried 6-0.

125 Plan – Melanie Symons

As of the current date, MPERA has not heard from the IRS; however, we have heard from Ms. Tonya McCormack, Chief of the Labor Standards Bureau concerning the treatment of insurance premiums and 125 plans for overtime purposes. The information provided by Ms. McCormack is consistent with and supports the Board's rules and policies regarding when employer paid health insurance premiums must be included as part of compensation for overtime purpose. If the premium is irrevocably made by an employer to a trustee or a third person pursuant to a bona fide plan for health insurance, it need not be considered compensation for overtime purpose. Conversely if the premium is part of a 125 plan and constitutes an elective payment that can be received as cash by the member, it is not an 'irrevocable' payment to a trustee or third party and must be considered compensation for overtime purpose. If the employer does not treat this elective payment as compensation for overtime purposes, it can not be considered compensation for retirement purposes. No action by the Board is required at this time.

Legislative Committee Report – Robert Griffith/Staff

The Legislative Session has met the half-way mark. All general bills were transmitted to the other chamber. Appropriation bills do not have to be transmitted until the 67th day (around March 30th).

Ms. Roxanne Minnehan presented the following update:

HB67, *Clarify poll of Legislature for administrative rules*, will be heard on Friday March 9th at 3pm, in the State Administration.

HB81, *Generally revise teacher retirement system laws*, will be heard on Monday March 12th at 3pm, in the State Administration.

HB129, *Revise retirement laws to conform to federal law and decision*, will be heard on Wednesday March 14th at 3pm, in the Senate State Administration.

HB293, *Allocate lottery money to teacher's retirement system*, will be heard on Friday, March 9th in the House Appropriations.

HB792, *Index postretirement GABA for future PERS and TRS members*, missed the deadline for general bill transmittal. The bill is dead right now; however, there is discussion that this bill may be revived.

SB62, *Increase payment to advisory board members*, is being heard in the House Judiciary the afternoon of March 8th.

SB71, *Revise bill sponsor notification for administrative rules*. The hearing was conducted the morning of March 8th. Ms. Kim Flatow attended the hearing.

SB72, *Require Senate Confirmation of PERB nominations*. The hearing was conducted the morning of March 8th. Ms. Kim Flatow attended the hearing.

There was no other information on any of the bills that affect MPERA. Ms. Minnehan did contact Rep. Himmelberger who stated that he planned to have multiple work sessions on retirement bills prior to taking executive action. The first work session will be on Friday, March 9th.

There are two bill draft requests that may still be introduced:

LC0991, *Revise post retirement benefit increases for statewide police retirement systems*. This bill increases retirement benefits by \$500 for MPORS members who retired before January 1, 1991 and increases the GABA to 5% for all MPORS members covered by the GABA.

LC1966, *Revise pension plans for all new hires*. This would implement a DC plan for all new hires in PERS and TRS. There is a substantial amount of information concerning this bill and the Board has many questions. The Board also questioned why a new DC plan is necessary.

NOTE OF INTEREST: This is President Carole Carey's last meeting. Ms. Carey expressed her appreciation to everyone for making her membership on the Board very rewarding and thanked everyone for their support. Ms. Roxanne Minnehan presented Ms. Carey with a plaque and a cake on behalf of the MPERA staff.

Personnel Salary Survey – Lynn Long

Ms. Lynn Long, Human Resources Standards & Service Bureau Chief gave a presentation to the Board on the state salary survey process. This is a process the state uses to analyze state occupation wages versus other public and private sectors. The purpose is to establish benchmark anchor levels for all career bands which are then used to calculate Montana relevant median salary ranges for the different occupations. The briefing was very informative as the Board Personnel Committee is beginning contract negotiations. Of note, a State Pay Special Task Force has been established. One of the purposes of the task force is to review and, if necessary, reconsider the Compensation Advisory Committee's October 2004 recommendations that all non-exempt executive branch position be paid under the broadband pay plan by July 1, 2007. The Board thanked Ms Long for her very informative presentation.

BOI Annual Presentation, Asset/Liability Study – Clifford Sheets

Mr. Clifford Sheets, CIO Board of Investment, presented the FY 2006 financial results, recent investment performance, asset/liability study and future plans for retirement fund investments.

Mr. Sheets also handed out an excerpt from the R.V. Kuhns & Associates, Inc report for PERS which presented projected valuation results of the retirement plan with respect to the funded status of the plan; presented projected benefit payments of the plan; and selected an asset mix that helps protect and increase funding levels, while providing adequate liquidity for benefit payments.

The Board thanked Mr. Clifford Sheets for his in-depth and very informative presentation.

MPERA Staffing Update – Roxanne Minnehan

Ms. Roxanne Minnehan reported on the following MPERA staffing:

1. Executive Assistant – Karen Davis has resigned. Her last day will be Thursday March 15, 2007. Because the position was recently advertised with no in-house interest, the Union agreed to an email message requesting interest within 24 hours. There was no response. The position was posted statewide, March 2nd, with a closing date of Monday, March 19th at 5pm.
2. Receptionist Position – The position was posted with a closing date of February 23rd. We have received 17 applications and are currently in the interview process.
3. IT Programmer - This position was posted statewide with a closing date of February 28th. There were no applications received. The job profile is currently being revised and may be re-classified.
4. Auditor – New position. The job profile has been created and classified. The vacancy announcement has been prepared and the interview questions are in progress.

In regards to a new Board member appointment, Ms. Minnehan contacted Ms. Patti Keebler to inform her that the Board meetings were now at the beginning of the month and asked if there would be an appointment by the April 12th meeting. As a result of that, Ms. Keebler provided Ms. Minnehan with a list of applicants.

Board of Investments Update – John Paull

No additional information was provided. John Paull and Troy McGee both complimented Clifford Sheets on his presentation and his willingness to assist the MPERA Board and Staff.

Litigation Update – Melanie Symons/Scott Miller

Ms. Melanie Symons reported a decision was issued on the motion for summary judgment filed in the *Teichrow* case and that Ms. Beth Baker and Mr. Bill Gianoulis would be presenting litigation strategies in the closed meeting.

Mr. Scott Miller reported that there was no new information concerning the *Baumgardner* case. He also reported that he took the bar exam!

The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. Additionally, with respect to the Teichrow matter, President Carey determined that the meeting should be closed as part of the litigation strategy exception to the open meeting policies. As such, this portion of the meeting will be closed.

SYNOPSIS OF THE CLOSED MEETING

The minutes of the closed meeting of February 8th were presented. Ms. Elizabeth Nedrow mentioned that Mr. John Paull and she attended the February Board meeting via conference. After corrections were noted, Mr. Troy McGee moved the minutes of the previous closed meeting be approved. Mr. Robert Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Litigation Issues

Ms. Beth Baker and Mr. Bill Gianoulis reported to the Board in regards to the *Teichrow vs. MPERA* case. Judge Sherlock denied in part the motion for summary judgment. The Judge ruled that the hiring of the Executive Director of MPERA is in fact a matter of significant public interest requiring compliance with notice and open meeting requirements of the law. He validated the Board's decision that it was proper for the Board to follow public process. He found that the decision to hire TT without this process was in violation of the public process. However, he did find that the State can not simply admit to not following the proper procedures and leave the plaintiff with no remedy. The remaining issue is whether Terry Teichrow was discharged for good cause under the "Wrongful Discharge Act".

The Judge also found that the Board President, Ms. Carole Carey is entitled to qualified immunity and granted summary judgment on the basis of Title 42 U.S.C Section 1983 - which is the Civil Rights Claim. This is significant because the civil rights claim carried the most potential for damages and would have permitted the naming of additional defendants. Based on this, a motion was filed to amend the court caption to remove "Ms. Carole Carey" and "DOEs A-Z". Section 1983 claims also carry a potential remedy for recovery of attorney's fees. With dismissal of that claim, the scope of issues and the potential scope of the damages have been narrowed. The remaining issue falls under the "Wrongful Discharge Act" which carries limited remedy.

Various options were then discussed.

FLO Appeal – PERS, JC

JC, through her attorney, Mr. Marc Buyske, asked the Board to review an alleged Family Law Order (FLO) and award her \$18,278.75 pursuant to the FLO.

During its initial discussion, the Board determined that the order in question was not a FLO. Ms. Elizabeth Nedrow made a motion to deny payment to JC based on the Findings of Fact, Conclusion of Law and Order dated August 23, 2005 was not a FLO. Mr. Robert Griffith seconded the motion. Motion carried 5-1 with Ms. Carole Carey voting nay. Mr. Marc Buyske asked for a written decision.

Approximately 30 minutes later, Mr. Marc Buyske and JC requested to re-open the record as JC wanted to clarify some information that she felt was pertinent to the case. Mr. Terry Smith made a motion to reopen. Mr. Troy McGee seconded the motion. The motion carried 6-0.

JC was sworn in by Ms. Carole Carey. JC stated that after the order of August 23, 2005, she contacted MPERA and was told she needed proper paperwork. However, when she asked what paperwork she needed, she was told to contact her attorney. At the time, her attorney had quit because she couldn't pay him because the money was tied up in the system. She was informed that MPERA couldn't release the money until MPERA received the proper paperwork. JC stated that she was in contact with MPERA approximately five times between August 23, 2005 and April 11, 2006. According to JC, she was never informed that she needed an amended FLO order.

The Board feels that although the staff followed the proper procedures, additional information could have been given to JC to make it clear to her that she needed an amended FLO.

Based on this testimony, Mr. Bob Griffith made a motion to reconsider the previous vote of the denial of payment. Mr. Troy McGee seconded the motion. The motion carried 6-0.

Based on the 19-2-903(3), MCA, which states "...If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the Board shall correct the error and if necessary, equitably adjust the payments". Mr. Bob Griffith made a motion to pay JC, \$18, 278.75 minus \$2,975.00 attorney fees for a total of \$15,303.75. Mr. John Paull seconded the motion. The motion carried 6-0.

Contested Case

In January 2007, Ms. Kim Flatow reported to the Board that RW had terminated employment in November and had applied for retirement from PERS, with retirement effective date of November 1, 2006. However, before he received his first retirement check, he returned to work for another PERS-covered employer. Under statute, that nullified his election to retire.

RW presented his position. RW terminated employment on October 27, 2006. Prior to that date, on October 25, 2006, RW completed an Optional Membership Form for his new employment in which he declined PERS membership. MPERA received this document on November 28, 2006. Since this document was signed prior to his termination date with his first employer, RW was advised that he was not eligible to receive his November retirement benefit payment and he needed to return the payment for that month.

MPERA forms clearly state a retiree may return to PERS covered employment after a 30 day break **and** the receipt of the first retirement check. RW would have received his first retirement check on November 30, 2006 and could have returned to work for a PERS agency on December 1, 2006.

RW states that he was misinformed by his second PERS-covered employer. RW feels this was clearly an honest mistake. Therefore, in the spirit of good faith and under 19-2-904(3), MCA, Ms. Elizabeth Nedrow made a motion to reinstate RW retirement back to November 2006. Mr. John Paull seconded the motion. Motion carried 5-1 with Mr. Robert Griffith voting nay.

Retirement Report

- Disability Claims:

- RD is 46 years old. He was employed as a maintenance worker 19 years and 12 months. He has been diagnosed with post concussive syndrome, depression, anxiety and chronic daily headaches. Prognosis is poor for meaningful improvement. Dr. McEvoy and the Disability Examiner agree that he is unable to work. However, due to this relatively young age, the Disability Examiner recommends annual reviews as necessary. Mr. John Paull made a motion to approve disability request with annual review. Mr. Bob Griffith seconded the motion. The motion carried 6-0.
- CJ is 56 years old. She worked property valuation auditor. She resigned on November 21, 2006. She has been with PERS for 16 years and two months. Both Drs. Bateen, PhD and McEvoy, MD reviewed this case. Although she suffers from headaches, depression and anxiety; they feel she can perform her regular work. Based on the doctors' findings the Disability Examiner recommends denial of disability benefits. Mr. John Paull made a motion to deny disability benefits. Mr. Bob Griffith seconded the motion. The motion carried 6-0.
- MJ is 57 years old. She works as a Library Technician. She has been diagnosed with reduced heart function, possible depression. Prognosis - restoration of normal function appears guarded. She has been with PERS for 20 years and 10 months. Dr. McEvoy feels her condition does not prevent her from working, particularly with accommodations. The Disability Examiner recommends denial of disability at this time. Mr. John Paull made a motion to deny disability benefits. Mr. Bob Griffith seconded the motion. The motion carried 6-0.
- LM is 53 years old and worked as a Social Worker. She has been with PERS seven years and four months and has been diagnosed with Post Traumatic Stress Disorder (PTSD) and depression. Her prognosis is poor. Mr. John Paull made a motion to approve disability request with annual review. Mr. Bob Griffith seconded the motion. The motion carried 6-0.
- CB is 55 years old. She as an Accounting Tech and Administrative Support and has been with PERS for 15 years and 10 months. He has been diagnosed with

degenerative joint disease, post removal of Baker's Cyst from left knee and carpal tunnel syndrome. Prognosis is not noted. Mr. John Paull made a motion to approve disability request without annual review. Mr. Bob Griffith seconded the motion. The motion carried 6-0.

- Finalized Service Retirements Disability Benefit Payments.

Ms. Kim Flatow presented the Board with the report. Mr. Robert Griffith made the motion to approve the finalized service retirements, disability benefit payments, monthly survivorship death benefits, etc. Ms. Elizabeth Nedrow seconded the motion. The motion passed 6-0.

A letter from the Board will be sent to DW in recognition of over 41 years of public service.

Contested Case/Litigation Updates –

Ms. Melanie Symons reported on the JT contested case. JT appealed the Board's determination supporting staff's plan to grant TRS time into PERS on a month by month basis. Thomas Bowe, AG's Office is hearing examiner. Motion for summary judgment was fully briefed on March 7, 2007. The hearings officer granted another week to reach agreement on facts. The hearing on the motion for summary judgment will be held on Wednesday, March 14, 2007.

Ms Melanie Symons reported on the SW case. SW is contesting the Board's denial of his request to elect GABA. A motion for summary judgment was filed this week.

ADJOURNMENT

There being no more business before the Board, Mr. Robert Griffith moved to adjourn the meeting. Ms. Elizabeth Nedrow seconded the motion. The motion passed with all six votes, and Carole Carey adjourned the meeting at approximately 2:50 pm. The next meeting is scheduled for April 12, 2007, at 8:30 a.m. in Helena.